FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 2 4 2004

Charles McLaughlin
25 Tanglewood Drive
Bryant, AR 72022

RE: MUR 5514
Charles McLaughlin

Dear Mr. McLaughlin:

On August 12, 2004, the Federal Election Commission found that there is reason to believe that you knowingly and willfully violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Roy Q. Luckett, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Charles McLaughlin MUR 5514

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. THE APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution, and that no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f. In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii).[1] This prohibition also applies to persons or entities who provide money to others to effect contributions made in another's name. 11 C.F.R. § 110.4(b)(2).

[1] This regulation "applies to those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another..." 54 Fed. Reg. 34,105 (1989). In *Central Bank of Denver v First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), the Supreme Court held that private plaintiffs could not maintain an aiding and abetting action under § 10(b) of the Securities and Exchange Act of 1934 or Rule 10b-5 thereunder because the text of § 10(b) did not provide for aiding and abetting liability. This ruling, however, does not affect the validity of 11 C.F.R. § 110.4(b)(1)(iii), which arguably goes beyond the text of 2 U.S.C. § 441f in imposing liability for assisting in making contributions in the name of another. The *Central Bank* opinion did not address an agency's authority to promulgate prophylactic rules, which commonly enlarge the scope of the statute; indeed, the Court upheld the Security and Exchange Commission's authority to promulgate such a rule in a post-*Central Bank* decision. *U.S. v. O'Hagan*, 521 U.S. 642, 673 (1997). Imposing liability on those who assist in making contributions in the name of another through 11 C.F.R. § 110.4(b)(1)(iii) also serves a prophylactic purpose.

The Act penalizes more heavily violations that are knowing and willful. 2 U.S.C. §§ 437g(a)(5)(B), (6)(c), and (d)(1). To be liable for a knowing and willful violation, respondents must act with the knowledge that they are violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee,* 640 F. Supp. 985, 987 (D.N.J. 1986). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins,* 916 F.2d 207, 214-15 (5th Cir. 1990).

III. FACTS AND ANALYSIS

A. Shelly Davis' Memorandum

Information in the Commission's possession alleges that CWS may have reimbursed campaign contributions to multiple federal campaigns through company payments of fraudulent invoices, or other reimbursement vehicles, to conduits who were outside vendors to CWS. According to a December 3, 2002 memorandum to CWS board members from Shelly Davis, administrative assistant to former Community Water System, Inc. ("CWS") General Manager Greg Smith, Ms. Davis notes that she became aware of alleged political contribution reimbursements in 1998:

Ms. Davis' memorandum further maintains that the reimbursement scheme continued in 2000. She states that Preston Bynum allegedly called Greg Smith again in order to set up a fundraiser for Congressman Berry in September. According to Ms. Davis, "Once again Greg made his phone calls and instructed the individuals to handle as before."

Although Ms. Davis in her December 3, 2002 memorandum refers generally to multiple individuals who were instructed to contribute with the expectation of reimbursement, she specifically identified a "Charlie." The Commission believes this may refer to Charles McLaughlin. E-mail correspondence regarding the making of political contributions, included in information in the Commission's possession, shows that Greg Smith addressed Charles McLaughlin by the nickname "Charlie," and Mr. McLaughlin made political contributions to Congressman Berry and others in 2000 and 2002. Moreover, Dun and Bradstreet reports identify Mr. McLaughlin as the President of McLaughlin Engineering, Inc., a company that appears to

---

[2] According to published accounts, in 1998 CWS General Manager Greg Smith hired Preston Bynum, a recently released felon convicted of bribery and perjury charges, as a lobbyist to help CWS secure federal and state funding for the Lonoke-White Project. *See* Elisa Crouch, *Waterline Project Beset by Conflicts over Management*, The Arkansas Democrat Gazette, March 2, 2003. The Lonoke-White Project is a pipeline expected to pump water from Greers Ferry Lake to six water systems in Lonoke and White counties in Arkansas, reaching more than 16,000 customers. *Id.*

have worked with CWS on matters concerning the Lonoke-White Project. *See* Elisa Crouch, *Waterline Project Beset by Conflicts over Management*, The Arkansas Democrat Gazette, March 2, 2003. Under these circumstances, the Commission believes there is a permissible inference that "Charlie" is in fact Charles McLaughlin.

According to Ms. Davis' memorandum, CWS engaged in political contribution reimbursement activity in 2002 in connection with an August 9, 2002 fundraiser for Congressman Berry and an August 15, 2002 fundraiser for Senator Hutchinson. CWS allegedly reimbursed "Charlie" for contributions he made to the campaigns of Congressman Berry and Senator Hutchinson. Ms. Davis states that, owing to the delay in "Charlie" receiving reimbursement for a 2000 contribution, Mr. Smith requested that "Charlie" send his invoices before the contributions were actually made:

On December 16, 2002, shortly after Ms. Davis described the alleged reimbursement scheme to members of the CWS board, CWS reportedly dismissed Greg Smith, reportedly noting in a file memorandum that Mr. Smith's activities on behalf of CWS appeared to involve illegal contributions to political candidates and the falsification of records.[3] Further, CWS board member Barbara Sullivan has stated in press accounts that she expects the full scope of the reimbursement scheme to reach at least $20,000 in reimbursed contributions. *See* Bert King, *Water Chief Fired Due to Dereliction,* The Cabot Star Herald, January 8, 2003. Mr. Smith reportedly has maintained his innocence; Mr. Smith and CWS currently are embroiled in two

[3] *See* Christine Weiss, *CWS memo cites 'illegal acts' leading to firing*, The Heber Springs Sun-Times, January 3, 2003.

separate lawsuits (wrongful termination and breach of contract) growing out of the allegations in this matter.[4]

B. Analysis

As discussed previously, the Commission believes that Charles McLaughlin is the "Charlie" named by Ms. Davis as a person that Greg Smith brought into an alleged reimbursement scheme, although the possible reimbursement mechanisms are not precisely known at this time. *See* discussion *supra*. According to FEC disclosure records, in 2002, Mr. McLaughlin and his wife, Cora McLaughlin, are reported as collectively making contributions totaling $4,000. Mr. McLaughlin is reported as contributing $1,000 each to the Berry committee, the Hutchinson committee, and on September 9, 2002, to the "Hutchinson and Arkansas Victory Committee," an apparent joint fundraising committee. Mrs. McLaughlin is reported as contributing $1,000 to the Berry committee. These contributions are consistent with Ms. Davis' allegation that on July 15, 2002 Greg Smith requested "Charlie" to submit invoices to CWS for $4,000.

As discussed *supra*, knowing and willful activity can be shown by an elaborate scheme to disguise corporate political contributions. *See United States v. Hopkins,* 916 F.2d 207, 214-15 (5th Cir. 1990). Ms. Davis alleges that Greg Smith instructed "Charlie" to submit false invoices to CWS to collect reimbursement for making contributions to federal candidates. If Mr. McLaughlin did so, this would represent an elaborate scheme by him to disguise corporate

---

[4] *See* Sonja Oliver, *CWS board still facing lawsuits*, The Heber Springs Sun-Times, December 24, 2003. In February 2003, following Smith's termination, CWS dissolved its contract with Cenark. *See* Michelle Hillen, *Lawsuits fly· Fired utility chief, water system toe-to-toe Pipeline conflict of interest cited*, The Arkansas Democrat Gazette, July 1, 2003. Mr. Smith apparently lost approximately $1.3 million in Cenark fees due to the contract dissolution. *Id.* On December 23, 2003, citing breach of contract, Cenark sued CWS for "$1.2 million-plus." *See* Randy Kemp, *Smith sues CWS for $1.2 million,* The Heber Springs Sun-Times, January 30, 2004.

reimbursements of political contributions.

Therefore, there is reason to believe that Charles McLaughlin knowingly and willfully violated 2 U.S.C. § 441f.